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Current Topics.

Mr. Justice Uthwatt.

FOR many reasons the appointment of Mr. AUGUSTUS ANDREWES UTHWATT to the vacant judgeship in the Chancery Division was not unexpected. In 1934 he became Junior Counsel for the Treasury on the Chancery side. In 1939 he served as Chairman of the Committee on the Responsibility for the Repair of Premises Damaged by War and of the Committee on Liability for War Damage to the subject-matter of Contracts, and in 1940 he was Chairman of the Committee on Assessment of War Damage to Property. It should also be recalled that he was Legal Adviser to the Ministry of Food from 1915 to 1918. Born in 1879, his lordship was educated at Ballarat College, Victoria, and Balliol College, Oxford, where he obtained the B.C.L. degree and became Vinerian scholar. He was called to the Bar at Gray's Inn in 1904, having obtained the coveted "studentship"; in 1927 he became a Bencher of his Inn, and in 1939 he was made Treasurer. Both branches of the legal profession will heartily approve this excellent appointment, and feel confident that it will merely mark a stage in a continuing career of notable public service. As we go to press we learn that Mr. Justice UTHWATT has been appointed Chairman of the expert committee, appointed by Lord REITH, on questions of land compensation and betterment, with special reference to speculation.

The Office of Constable.

THE unfortunate death in Nairobi of LORD ERROLL, who held the office of hereditary Lord High Constable of Scotland, is a reminder of the gradual development of the term "constable." Popularly and quite naturally we identify the word with that comparatively humble, though extremely useful, functionary, a police officer. The word "constable," itself denotes a groom of the stable, but later the term was used for the principal officer of the royal household. This was the case not only in this country, but likewise on the continent, notably in France, where the constable ultimately rose to be commander-in-chief of the army during the absence of the monarch, as well as being the supreme judge of military offences and of questions of chivalry, which latter function included the regulation of all matters connected with the tiltt, ournaments and trials by combat. In its long history, however, the term has lost much of its more aristocratic denotation.

Minor War Damage.

WHEN the House of Commons went into Committee on the War Damage Bill on 23rd January, Sir ROBERT GOWER moved the deletion of the proviso to cl. 2 (1) that no payment should be made in respect of war damage to land where the amount of the damage was less than £5. He said that in the vast majority of properties damaged the average amount in question was between £2 and £3. The proviso would work undue hardship on large numbers of working men who had invested their savings in houses and had to pay contributions under the Bill. Other speakers drew attention to the fact that in the case of some property-owning local authorities the damage in the aggregate might be substantial although the damage to individual houses was small, and also to the fact that some properties were damaged more than once, the damage on each occasion being less than £5, but considerably more in the aggregate. The Attorney-General pointed out that the object of the proviso was to prevent the immense increase in administration costs which would be caused by its deletion. He said that the Chancellor of the Exchequer agreed that there should be a right to aggregate successive damage to a single property for claim purposes. The amendment was withdrawn on Sir KINGSLEY WOOD'S assurance that he was prepared to consider whether any alternative could be found. The minimum limit of payment must be to some extent arbitrary, and no doubt a good case can be made out for fixing it at an even lower level. The other side of the picture, however, is not only the heavy increase in administration costs, but also the fact that, as advocates will readily appreciate, the smaller the amount of damage that may be made the subject-matter of a claim, the more difficult does it become to decide whether it is due to the attrition of war or of mere fair wear and tear.

Client Accounts.

IT is proposed by the Council of The Law Society to submit to the Master of the Rolls for his approval amendments of rr. 4 and 5 of the Solicitors Accounts Rules, 1935. These amendments are set out in full in the current issue of *The Law Society's Gazette*. The purpose of the amendments is mainly to clarify the meaning of the rules with regard to what may be drawn from a client account and what need not be paid in. This has become desirable owing to the clause in the Solicitors Bill which would require every solicitor, unless exempted by rules made under that clause, to deliver annually a certificate that he has complied with the Accounts Rules. In the existing r. 4, it will be recalled, "money in respect of which there is a liability of the client to the solicitor" (in para. (*a*)) may be drawn out as well as "money properly required for or towards payment of a debt due to the solicitor from a client." The view has been taken that there is no distinction between those words, and that the solicitor should not be expected to have to proceed to judgment in order to define his debt, as would appear to be the case from the rules in their present form. Moreover, under para. (*e*) of r. 5, no distinction is drawn between money paid to a solicitor on account of costs already earned and money paid to a solicitor generally on account of costs before any or any substantial amount of work has been done. The proposed amendments would secure (*a*) that where a client has been notified of the amount of costs earned the transfer of such amount from client account to office account should be permissible if a sufficient fund is held in that account to the client's credit; and (*b*) that the solicitor will be required to pay into client account money received from a client on account of costs unless the costs have already been incurred and a bill of costs or other note of charges has been delivered, or unless the money is paid as an agreed fee for business

undertaken or to be undertaken. The Council intimates that any observations upon the proposed amendments which members may care to make should be submitted on or before 28th February, 1941.

Charred Bank Notes.

THE official attitude on the subject of the issue of fresh Bank of England notes against notes which have been partially destroyed in air raids was explained by a Post Office official on 20th January (*The Times*, 20th January). He said that in issuing fresh notes in such cases there were some safeguards that had to be applied. More than half of the note must be left and the whole of the sentence, "I promise to pay the Bearer on Demand the sum of One Pound (or Ten Shillings)" must be there. He insisted also that at least one-third of the chief cashier's signature at the foot of the note should be readable. When these conditions were not fulfilled the Post Office passed on notes to the Bank of England for a decision. As an example of the reliance that could be placed on the bank he mentioned that a few days previously a cashier brought a box of charred paper to the Bank, representing, as he said, £327. The bank after examination of the pieces handed the cashier £352. He recommended that people with banking accounts should take burnt notes to the bank. While both lawyers and laymen may have every confidence that Bank of England decisions will not be unfair, they will do well to bear in mind the peculiar case of *Hong Kong and Shanghai Banking Corporation* v. *Lo Lee Shi* [1928] A.C. 181. Lo Lee Shi was given two banknotes, each for $500, by her husband. She put them in the pocket of a garment, and then, having forgotten their hiding place, washed, dried and starched the garment. On proceeding to iron it she found a wad of paper in the pocket, all that was left of the banknotes. She managed with difficulty to restore one of the notes to its original shape and this was paid. Most of the other note was restored and the name of the bank, the amount of the note, the promise to pay bearer and the signatures of the chief accountant and chief manager clearly evidenced. Only the number could not be recovered. Lord Buckmaster, in giving the opinion of the Judicial Committee, referred to the ravages of a rat, a white ant or other animal pest, and destruction by fire. The question, he said, once honest accident was proved, was whether the extent of the damage was such as to prevent the note being sued upon, and possibly also whether the missing material parts could be supplied by oral evidence. The absence of the number was held to be no part of the operative portion of the note, and Lo Lee Shi recovered her $500.

Hypothesis.

AMONG the many Saturday evening diversions provided by the British Broadcasting Corporation there recently appeared a parlour game called "Hypothesis," said to be "for the highly intellectual and the very serious folk, not forgetting those with a sense of humour." Those taking part were a lawyer, a scientist, a historian and an economist. The game consisted in putting a hypothetical question to each member of the group, and after some slight discussion the appropriate member of the group provided the answer. We trust that we are not unduly sensitive in detecting a good-humoured "baiting" tendency in the question addressed to the lawyer, which was "What would be the state of society in this country if there were no legal profession?" In the course of the discussion the debaters arrived at the conclusion, somewhat startling to professional ears, that the golden age would have arrived simultaneously with the disappearance of the legal profession. It was a relief to hear that it was not a case of *post hoc propter hoc*, but only because mankind being perfect in a golden age there would be no need for either law or lawyers. Quite apart from golden ages, as the lawyer pointed out, there must be law in every civilised society, and a certain fifteenth century king who had tried to dispense with lawyers in his parliament (called the "Unlearned Parliament") soon found out the difficulty of doing so, and the parliament came to a quick end. He truly stated that the Workmen's Compensation Act was originally devised so as to be understood by everyone and therefore presumably to dispense with the need for any resort to lawyers, but in fact it had put more money into the pocket of lawyers than any other piece of legislation. It might be added in respectful amplification of this important and little-understood point that the fault of disputing the meaning of ambiguous language lies at least as much with the litigant as with the lawyer. From the lawyer's point of view the best drafted Act of Parliament is one which contains the fewest possible of those ambiguities and vaguenesses which are to be found in abundance in the written and spoken language of the English and other literary people. That explains, to some extent, why parliamentary draftsmen have evolved a language which, though frequently baffling to the layman, and sometimes in its more involved passages to lawyers and judges as well, at any rate seeks to express definite and accurately ascertainable ideas through the medium of agreed words and phrases.

"The Fifth Freedom."

EVERY lawyer will appreciate the full value of what the Lord Chancellor termed "the fifth freedom" at the opening of a War Weapons Week at Kingston-upon-Thames on 24th January. He quoted President ROOSEVELT's recent reference to the four freedoms which every true democracy must seek to secure—freedom of speech, freedom from want, freedom from insecurity, and freedom from fear. The fifth freedom, said LORD SIMON, was the freedom of every citizen to appeal to the courts to protect him from injury and insult even though the wrong was committed by the misuse of official power. His lordship instanced the impossibility of applying for a writ of *habeas corpus* from a German concentration camp or suing the Gestapo for damages. Even in cases of detention under the necessarily stringent reg. 18B of the Defence (General) Regulations, 1939, applications to the High Court for writs of *habeas corpus* have been heard by the High Court. In *In re Sabini* on 20th January the Lord Chief Justice remarked on the importance in cases in which the liberty of the subject was involved of observing with scrupulous accuracy the provisions invoked. The mere existence of such remedies as the writ of *habeas corpus* and actions for damages for assault and false imprisonment is sufficient to deter any offender, official or otherwise, against, "the chartered right of Englishmen." This freedom, wont as Blake said, "in many a glorious field," will be won on glorious fields again, and only then civilised society will be able to resume its progress towards the freedom from want, insecurity and fear which President ROOSEVELT put as the goal of every democracy.

Recent Decisions.

In *Read* v. *Gordon* (*The Times*, 25th January) the Court of Appeal (MACKINNON, CLAUSON and DU PARCQ, L.JJ.) allowed an appeal from His Honour Judge LAWSON CAMPBELL at Peterborough County Court. They held that where a defendant to a claim for possession had occupied a cottage from 1905 to 1935 by virtue of his employment and had been allowed to remain as a tenant from 1935, when that employment ended, and paid a rent of 5s. per week from 1935 instead of having it deducted from wages as hitherto, the dwelling-house was let as a result of a new agreement and not in consequence of his employment. The plaintiff therefore did not come within Sched. I (*g*) (i) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, and the defendant was entitled to the protection of s. 3 of that Act as to the availability of alternative accommodation.

In *Slater* v. *Worthington's Cash Stores* (1930), *Ltd.* (*The Times*, 25th January), OLIVER, J., held that the defendants owed a duty to users of the highway to protect them from falls of snow from their roof, where such snow could have been previously removed, or to give proper warning to the public if it could not be removed. His lordship also held that such an accumulation of snow was a nuisance, and awarded the plaintiff £560 damages, and costs, in respect of injuries which she had received when snow and guttering fell on her from the defendants' roof. A stay of execution was granted.

In *McLeod* v. *South Durham Steel and Iron Co.*, on 29th January, the Court of Appeal upheld a county court judgment in which it was held that a workman who had lost two fingers and injured a third while removing from a dangerous place in which he had concealed them from his fellow-workmen rags which he used in handling sharp steel plates, was acting in the course of his employment within s. 1 (1) of the Workmen's Compensation Act, 1925, and that there was ample evidence that he was acting within the extension in s. 1 (2) of the Act.

In *R.* v. *Thomas* (*The Times*, 30th January) the Court of Criminal Appeal on an application for leave to appeal against sentence, reduced a sentence of five years' penal servitude for fraudulent conversion to three years' penal servitude, although as the court intimated, it usually granted the application for leave to appeal in such a case and heard the appeal on a subsequent day. In cases involving sentence only it was a waste of public time and money to bring the appellant up a second time.

In *R.* v. *Rachmylas and Lockyen* (*The Times*, 30th January) the court refused leave to appeal against sentences of five years' penal servitude for looting contrary to s. 38A of the Defence (General) Regulations. The court stated that although both appellants were previously of good character and it was their first offence, it was the unhappy duty of the court to impose sentences even on first offenders, to mark the gravity of the offence.

The Prevention of Fires in War Time.

HAZARDS from fire and legal remedies for the same are no new feature of English law. As long ago as 1401 it is recorded in the case of *Beaulieu* v. *Finglam* (Y. B. Pasch., 2 Hen. IV, f. 18, pl. 6) that one was liable to a special action of trespass on the case for allowing one's fire to escape and so to cause damage. The case of *Turberville* v. *Stampe* (1697), 1 Ld. Raym. 264, is authority for the proposition that the liability is the same whether the fire escapes from a building or from an open piece of land. Under this early law the duty to keep one's neighbour harmless from the effects of fire was cast upon the occupier of the land or buildings where the fire was, and related only to fires kindled thereon by the occupier or by persons for whose acts he was responsible. The Fires Prevention (Metropolis) Act, 1774 (14 Geo. 3, c. 78), which, despite its name, applied to the whole country, dealt with fires caused by accident; in such cases the occupier of the building or of the land on which the fire started was not to be held liable. A series of decisions throw light on the meaning of "by accident," and it has been held that if the occupier was negligent either in connection with the origin or with the spread of the fire he could not claim the protection of the Act. Further, the occupier was not liable if the fire was started by the unauthorised act of a stranger, though he has to rebut a presumption that the fire was due to his own default.

There can be little doubt that the recent fires caused by the dropping of incendiary bombs by enemy raiders are caused by the unauthorised acts of strangers. The dangers thereby caused have become so great that emergency legislation has become necessary to meet the situation and new and unusual duties have been cast upon the occupiers of premises. The first attempt to deal with the problem was the issue of the Fire Watchers Order, 1940 (S.R. & O., No. 1677), on the 19th September, made under the authority of reg. 27A and reg. 38 of the Defence (General) Regulations, 1939. Reg. 27A, which was itself added to the Defence (General) Regulations on the 19th September, 1939, by an Order in Council (S.R. & O., 1940, No. 1681), gave general powers to the Secretary of State to make an order such as that made. By reg. 38 these order-making powers may be exercised by the Minister for the purpose of the Civil Defence Act, 1939 (2 & 3 Geo. 6, c. 31), i.e., by the Minister of Home Security. As is common general knowledge the duties imposed by that order were totally inadequate to meet the situation and a new and wider scheme of fire watching has had to be introduced.

The new orders are, at present, three in number. The first is an Order in Council (S.R. & O., 1941, No. 68), amending the Defence (General) Regulations by introducing therein two new regulations—26A and 27B—and also substituting a new reg. 27A for the present one.

Under the authority of reg. 27A and reg. 38 the Minister of Home Security has made the Fire Prevention (Business Premises) Order, 1941 (S.R. & O., No. 69). According to art. 1 the order is to apply to all business premises in such areas as may be prescribed and also to any other business premises which may be prescribed. The expression "business premises," is defined in reg. 27A (7) as premises occupied wholly or partly for the purpose of any business, trade or profession; a local authority in discharging its functions is to be deemed to be carrying on a business. But the order is not to apply to any premises used partly for business purposes and partly as a dwelling-house. A duty is cast, by art. 2, upon the occupier of such premises to make proper and adequate arrangements so that fires occurring at the premises and due to hostile attack shall be immediately detected and combated. By art. 3 a duty is put upon persons, being male British subjects of the prescribed age, working at the premises to take turns at fire prevention duties at those premises. According to reg. 27A (3) (*b*) the prescribed ages must not be less than sixteen nor greater than sixty years of age. The occupier is to consult such employees in making his arrangements, which arrangements are to secure that an adequate number of persons are on duty with adequate equipment and that specific duties are allotted to them. Within fourteen days of the applying of the order to any premises the occupier is to notify the appropriate authority as to his arrangements. Article 7 (1) sets out who the appropriate authority is; except for special cases it is the borough council, or county council, or the Common Council of the City of London, according as to where the premises are situated. In the special cases set out in the order it is the Minister of Transport, the Board of Trade, the Electricity Commissioners and the like, depending on the nature of the particular premises. The order allows occupiers of adjoining or neighbouring premises to make joint arrangements, which will, of course, be very convenient for occupiers of small premises. As to persons working at the premises, the arrangements shall be such that the periods of duty outside working hours shall not in the aggregate exceed forty-eight hours in each month, that the duties shall be shared as equally as possible between all such persons, and that they shall not be entitled to any remuneration. Tribunals are to be set up to grant exemption in cases of persons medically unfit or in cases of exceptional hardness. Certain persons, such as constables, members of the Home Guard, persons already performing civil defence duties for periods of not less than forty-eight hours in each month, are to be exempt. The appropriate authority has power under art. 5 to make arrangements itself, if the occupier fails to do so, if they disapprove of the arrangements which the occupier has made, or if they are satisfied that he is unable to make the arrangements. The arrangements, which the appropriate authority make, may be joint ones in order to deal more conveniently with a group of adjoining or neighbouring premises. If the occupier then fails to carry out the arrangements the appropriate authority itself may, by virtue of art. 6, carry them out and recover any expenses so incurred as a civil debt. Nothing that the appropriate authority may thus do is to prejudice any criminal proceedings which might be taken against the occupier for his defaults. Article 8 allows the Minister of Home Security to delegate to a Regional Commissioner any of the functions exercisable by him under the order. This order revokes the Fire Watchers Order, 1939, with respect to any premises to which it applies, but, according to art. 11 (2), only as from the date on which the arrangements for those premises are approved by the appropriate authority. There is an important power in reg. 27A (6) by which any constable or person authorised by the appropriate authority may enter and inspect any premises to see whether the order is being obeyed. This order has now been applied to business premises in many areas. For example, it was applied to the City of London on the 22nd January, within fourteen days of which the arrangements will have to be notified to the appropriate authority. In this case the prescribed age of the persons to whom the order is to apply is between eighteen and sixty.

Regulation 27B deals with the duties of local authorities as regards fire prevention. The Secretary of State is empowered to direct local authorities to make arrangements to keep a watch for the fall of incendiary bombs and for the fighting of fires in their areas other than on premises covered by reg. 27A, i.e., on other than business premises. The appropriate authority under reg. 27A may notify the local authority that it is impossible to make adequate arrangements under reg. 27A without the assistance of the local authority; it is then the duty of the local authority to give that assistance. By para. (4), the Secretary of State may delegate to a Regional Commissioner any of the powers exercisable by him under this regulation.

The other new defence regulation, i.e., 26A, imposes obligations on all persons, being British subjects, to perform civil defence duties. The Secretary of State may make an order providing for the performance of such duties. By virtue of para. (1) (*a*) of the regulation, all British subjects of either sex residing in a prescribed area and of the prescribed age may be required to register for the performance of civil defence duties. In para. (8) (*a*) civil defence duties are defined as duties which a local authority is required to perform under the Air Raid Precautions Act, 1939 (1 & 2 Geo. 6, c. 6), and under the Civil Defence Act, 1939 (2 & 3 Geo. 6, c. 31), or any other functions relating to the extinction of fires. The order made by the Secretary of State may be applied to any areas in which it appears that the number of persons voluntarily enrolled for these duties is insufficient, and by para. (1) (*c*), persons registered under para. (1) (*a*) may be compulsorily enrolled to carry out part-time civil defence duties. It is laid down in para. (2) that only persons between the ages of sixteen and sixty may be required to register. Part-time duties are defined by para. (8) (*b*) as being not more than forty-eight hours in each month. It is the duty of every person enrolled to comply with any directions given to him as to the civil defence duties to be performed. According to para. (4), he is not entitled to any remuneration. Exemptions are to be granted to persons medically unfit, in cases of exceptional hardship, and to certain prescribed classes of persons; para. (6) provides for the setting up of tribunals to deal with applications for exemptions. The Civil Defence (Compulsory Enrolment) Order, 1941 (S.R. & O., No. 70), has been made by the Minister of Home Security under this regulation in conjunction with reg. 38. According to art. 1 of the order the powers set forth in reg. 26B are to be applied to areas with regard to which the Minister is satisfied that there are insufficient persons voluntarily enrolled to enable the local authority to discharge the duties imposed on it by reg. 27B. The local authority is empowered by Art. 2 to register all male British subjects of the prescribed age resident within its area and art. 3 deals with the enrolling of such registered persons. An important article is Art. 4, which concerns exemptions and releases from duty. Persons of the classes in the schedule to the order are exempted from registration and persons becoming members of these classes after registration are to be exempted from enrolment. The persons in this

schedule are members of the armed forces of the Crown (including Home Guard), constables, lunatics of various kinds, blind persons, and members of such other classes as may be prescribed. A person who at the date of the registration notice is already performing civil defence duties for a period not less than forty-eight hours in each month is exempt from enrolment so long as he continues to perform those duties. Registered persons who are performing duties similar to civil defence duties at premises occupied by a government department shall be exempt from enrolment. Again, if a person is performing duties under arrangements made under reg. 27A, i.e., duties with regard to business premises, he is not to be enrolled under this order, or if he is already enrolled he is to be released. Article 4 (9) lays down the procedure to be adopted when a person moves to another area. Delegation of the powers of the Minister to a Regional Commissioner is possible by virtue of Art. 5.

Criminal Law and Practice.

Time Limits for Prosecution.

A USEFUL review of some of the cases on the time limit for prosecution under s. 11 of the Summary Jurisdiction Act, 1848, and analogous provisions, is to be found in the recent judgments of the Divisional Court in *Rowley* v. *Everton* (*T. A.*) *and Sons*, 104, L.G.R. 461 (29th October, 1940).

The limitation generally imposed by that section, except where a statute specifically otherwise provides, is six calendar months from the time when the matter of the complaint or information arose.

In *Rowley* v. *Everton*, *supra*, the informations charged failure securely to fence certain dangerous parts of machinery contrary to art. 14 of the Quarries General Regulations, 1938 (S.R. & O., 1938, No. 632). All the machinery in question had been used for the first time on various dates between 12th November, 1938, and 29th August, 1939. The informations were preferred on 25th and 29th January, 1940, and the dates of the offences charged were 31st October, 1939, and 22nd December, 1939.

The Quarries General Regulations, 1938, were made under the Metalliferous Mines Regulations Act, 1872, s. 34 (1), of which provides, analogously to s. 11 of the Summary Jurisdiction Act, 1848: "Any complaint or information made or laid in pursuance of this Act shall be made and laid within three months from the time when the matter of such complaint or information respectively arose."

The justices dismissed the informations on the ground that their matter arose when the machines were first installed and operated, and as the latest date when this occurred was 29th August, 1939, more than three months before the date of the first information, the prosecution was out of time.

The Divisional Court unanimously reversed this decision and remitted the case to be dealt with on the correct basis. This, as the Lord Chief Justice put it, was that the offence charged was that of failure to keep the machinery securely fenced on 31st October, 1939, and 22nd December, 1939, dates within the three months' time limit. The fact that the machinery was not securely fenced on some date outside that time limit did not cause the matter of the information to arise outside the time limit.

Their lordships distinguished *London County Council* v. *Cross* (1892), 56 J.P. 550, on the ground that the offence there was the erection of a building outside the building line and therefore an information more than six months after such erection would have been out of time.

Hull v. *London County Council* [1901] 1 Q.B. 580, was described by Humphreys, J., as "a very peculiar case," the provision in the London Building Act, 1894, s. 73 (8), being "No projection from any building . . . shall extend beyond the general line of buildings in any street." The form of the information was that the defendant did on a named day extend a projection beyond the general line of buildings. The ground of the decision, said Humphreys, J., was that it could not be said that the projection was extended on a particular day, but it had continued to extend beyond the general line of buildings more than six months before.

The cases admittedly are difficult to understand, and sometimes to reconcile with one another. Humphreys, J., for example, spoke of the projection in *Hull's Case* continuing to extend; and yet the decision was clearly that the offence was not continuing, but that it was complete on a particular date, namely, the date on which the sign was affixed to the premises. The Lord Chief Justice even ventured to disagree with the decision if it was decided on this ground, and held in any case that it was a view not necessary to the actual decision, and was not binding on the court.

The difficulty arises particularly in the case of continuing offences. In some of these cases the simple test may be applied: "Is the matter of the complaint complete on the date when the offence is alleged to have been committed?" (*Corbett* v. *Badger* [1901] 2 K.B. 278). On this subject *Barrett* v. *Barrow-in-Furness* (1887), 51 J.P. 803, is a useful authority, as it decides that the six months' limitation must be counted not from the first discovery, but from the date of each day charged as if a separate offence. If these points are borne in mind there should be no difficulty in drafting correct informations.

A Conveyancer's Diary.

The War Damage Bill.

THIS week I interrupt the review of the year 1940 to deal with a number of points which have been put to me upon the effect of the War Damage Bill in particular cases, which should go on record before it is too late for the Bill to be amended.

One correspondent raises the question of church property; similar considerations would apply to other institutions, e.g., the colleges at Oxford. So far as the fabric of the church itself is concerned, the case is plain. It is "land" within the definition contained in s. 41 (1) of the Act, since "'land' means land in the United Kingdom and includes any buildings or works (other than plant and machinery) situated on, over or under land." Hence the scheme for "land" contained in Pt. I of the Bill would cover a church and such of its contents as are "works" but are not "plant" or "machinery." And since a church is owned and occupied for "the advancement of religion" it comes within s. 29, which, in effect, exempts it from liability to contributions, and provides that the payments in respect of damage shall be such as the commission decide to pay after consultation with "such persons or bodies as appear to them appropriate."

But, my correspondent inquires, what is the position of the organ in a certain cathedral, an instrument valued at some £20,000? Unlike the pews, which would count as "land" (since they are affixed to the freehold), the organ, although fixed to the building, is not "land," because it is clearly either "plant" or "machinery," or both. It would therefore not be within the scheme for free compensation for charity land. Is it entirely uninsurable, or is it within one of the other schemes? I think that it is probably within the "business" scheme. That scheme applies to "goods," a term defined in s. 68 (1) as including "all corporeal property not falling within the meaning of the expression 'land' in Part I of this Act" except choses in action and money. The part of the wide class of "goods" included in the "business" scheme are "all goods situated in the United Kingdom" which are owned or in the possession of "any person carrying on business in the United Kingdom," "and are held or used by him wholly or mainly for the purposes of that business." Now, the organ is in the possession of the vicar and churchwardens, or the dean and chapter, or the master and fellows, or whoever may be the appropriate ecclesiastical or academic body for the purpose of carrying on the affairs of the church, cathedral or college. Is what they do a business? I think it is. I have often quoted in this column the definitions of "business" given by the courts in cases on the construction of covenants and taxing statutes. It will here suffice to quote the words of Lindley, L.J., in *Rolls* v. *Miller*, 27 Ch. D. 71, at p. 88: "'Business' means almost anything which is an occupation as distinguished from a pleasure—anything which is an occupation or duty which requires attention is a business. —I do not think we can get much aid from the dictionary." In that case it was held that to carry on a home in which working girls were taken in, making no payment, was an infringement of a covenant against user for business. Such was also the result of *Bramwell* v. *Lacy*, 10 Ch. D. 691. where the activity was that of maintaining a hospital for poor persons whose inmates made payments according to their means. Relying on those cases, I myself felt bound some years ago to advise the trustees of an almshouse not to extend their institution on to land affected by a covenant against "business" until we had got an order declaring the covenant unenforceable. And an educational establishment is a business (see *Commissioners of Inland Revenue* v. *North and Ingram* [1918] 2 K.B. 705, and *Brighton College* v. *Marriott* [1926] A.C. 192). The case of the Oxford college is therefore covered, and though I do not know of any case directly deciding that carrying on a church or cathedral is a business, I can see no grounds on which one could begin to distinguish such a case from that of other equally surprising "businesses." The organ, therefore, falls within the "business" scheme, and if its value is really £20,000, the compulsory premium for the risk period at 30s. per cent. will be £300, an amount likely to reduce the cathedral's treasurers to despair. Nor does the case stop there: the same reasoning would apply to altar cloths and communion plate, often worth thousands of

pounds, though college plate and collections of other treasures might escape as not being necessary assets for the carrying on of the business. I suppose that the college port almost certainly would escape from the "business" scheme, but the furnishings of rooms would not.

These conclusions spell ruin for cherished and important national institutions. If they are wrong, the position is no less disastrous, because all the "goods" referred to will fall within the "private chattels scheme" and will be uninsurable beyond the paltry sum of £1,500. The whole matter requires adequate consideration, which the present text of the Bill does not suggest that it has received. It is reasonably clear that charity "goods" ought to be treated on the same lines as charity "land."

Consideration of the position of the chattels of Oxford colleges brings us to the next point; namely, that of the chattel and real assets of those other great educational establishments, the local authorities. These institutions are not expressly mentioned anywhere in the Bill. It will be convenient to discuss mainly their educational activities, but it must never be forgotten that they engage in numerous other activities, some of which are reserved for a future scheme, as being public utilities, by s. 30. Their schools are, of course, land. But the schools of a local authority are not within the provisions as to educational charities laid down in s. 29. That section only applies to land held for "charitable" purposes, and though "the advancement of education" is one of the list of charitable purposes, the subsection defining "charitable purposes" (s. 29 (2)) does not define that expression as including all the activities there listed, but as being only such charitable purposes as are also within the list. The subsection, in short, does not make anything charitable which is not already charitable, and it is obvious that for a local authority to execute its statutory function of providing education is not a charitable activity. What may be the position of "non-provided" schools, I should hesitate to say, but it is apparent that there is scope here for a tremendous muddle. The position of "provided" schools is, however, clear; they are in exactly the same position as ordinary land and are chargeable as such. And since the local authority is pretty clearly carrying on in them the business of providing education, all their contents are within the "business" scheme. Here is a new and heavy burden on the rates.

Finally, there is a question of more technical professional interest to lawyers. What is the position of instalments of contribution as between vendor and purchaser? The instalments are payable on 1st July in each year from 1941 to 1945 inclusive at a rate fixed by s. 15 (3) at 2s. in the £ of the contributory value (or 6d. in the £ for agricultural property) subject to variation in the circumstances specified in s. 16. The liability to pay such instalment falls on the persons having proprietary interests on the previous 1st January. But the payments are made in respect of a risk period extending only from 3rd September, 1939, to 31st August, 1941. In fairness, therefore, a man purchasing a house now, with all five "contributions" yet ahead of him, should be indemnified by the vendor against such proportion of his total liability as the past period of war bears to the period from now to the end of next August, roughly two-thirds. If he sells again next January, with four instalments still ahead, but all the risk period behind him, he should in his turn indemnify his purchaser against the whole liability, and so on. On the other hand, if a house has changed its owner since the war began but at a date before the Bill was published, no arrangement will have been made on this point, and the logical scheme cannot be worked out. The basis of ordinary apportionments between vendor and purchaser is the rule that under an open contract the purchaser is liable to all expenses and outgoings from the date on which a good title was first shown (see *Re Highett & Bird* [1902] 2 Ch. 214). If, therefore, any of the outgoings have been paid in advance, the purchaser must reimburse the vendor, and *vice versa*. I think it is pretty clear that since the liability under the Bill is a statutory liability accruing on each 1st July against persons having proprietary interests on the previous 1st January, and not payable in respect of any part of the total risk period no apportionment can be claimed on the ground of the vendor having (though he little knew it) already been protected for much of the risk period, unless there is a special condition. On the other hand, a vendor selling now would have, for the same reason, to pay the instalment due next 1st July. Unless the Bill is altered before it is passed, or unless the contribution is too small to matter, the contributions ought to be the subject of an equitable special condition in each case, and solicitors for vendors and purchasers should call their clients' attention to the point before formal contract.

Thus, finally, we are brought to a point which requires attention in Committee. Suppose that I contract to buy a piece of land containing a number of buildings and fields, and that between contract and conveyance one house on it is completely destroyed by a bomb; there is, I take it, no frustration, though there might be if the house was the main subject matter of the sale. So I can be compelled to complete. But the vendor will get the "value payment" since it goes to the person who was, immediately before the bomb fell, "the owner of the fee simple therein" (s. 10 (1)). It is true that if I have the valid contract I have an equitable fee simple, but the expression in the Bill, a strange one to a lawyer's ears, must mean the owner of the legal fee simple. Though a person so entitled has to share the payment with lessees, there is nothing to make him share it with the equitable fee simple owner, and the latter cannot, in the absence of a special condition, recover it under his contract to purchase, as it is not the subject of the contract. This state of affairs calls urgently for remedy. The draftsman appears to have overlooked equitable estates.

Landlord and Tenant Notebook.

Agricultural Holdings Act, 1923; Scope of Provisions for Arbitration.

IT has never been easy to define the scope of the provisions for arbitration in s. 16 (1) of the Agricultural Holdings Act, and *R.* v. *Judge Longson, ex parte Wilson* (1940), 85 SOL. J. 22, affords yet another illustration of the difficulty.

The subsection is a long and rambling one, containing a number of sentences which set out apparently to cover as much as possible, but each ending with some vital qualification. All these are followed by one which has been held further to qualify all: "and any other question" which under this Act is referred to arbitration." In the result, some attempt at orderly arrangement may be made. But the essential difficulty here is that the subsection itself creates a cross division, looking at the subject first from the point of view of parties and then from the point of view of nature of dispute. Adopting the latter *principium divisionis* as the more satisfactory one, it is convenient to enumerate (though not without possible overlapping) the matters as follows: (1) Claims for statutory *compensation*; (2) Other claims *in respect of the holding* (breach of contract "or otherwise," waste); (3) Questions arising out of the termination *of the holding*; (4) Questions of construction (arising during or on the termination) *of the tenancy agreement*. The words italicised indicate the limitations referred to above.

This arrangement reflects the state of the authorities. It was at one time thought and held that the words "arising out of the termination of the tenancy," which occur before those dealing with construction of agreements, governed everything which preceded them, and *Simpson* v. *Batey* [1924] 2 K.B. 666 (C.A.), in which the court refused to stay an action of ejectment, was decided partly on these lines; in *R.* v. *Powell* [1925] 1 K.B. 641, an arbitrator was prohibited from deciding *whether* a tenancy had determined; in *Harrison* v. *Ridgway* (1925), 133 L.T. 238, Bankes and Scrutton, L.JJ., sitting as a Divisional Court, considered themselves bound by *R.* v. *Powell* in a case in which a tenant sued for breach of his landlord's covenant to repair gates at the commencement of the tenancy, though both thought the view applied was wrong. But in *Lowther* v. *Clifford* [1927] 1 K.B. 130 (C.A.), Bankes and Scrutton, L.JJ., now sitting as such, took the opportunity of disapproving *R.* v. *Powell* and *Harrison* v. *Ridgway* and proclaiming their view that "at the determination of the tenancy" was not a general qualification.

Nevertheless, to deprive one of the King's subjects of his right to sue in the King's courts requires a clear expression of intention, as Scrutton, L.J., also observed in *Lowther* v. *Clifford*; and s. 54 of the Act—"except as in this Act expressed, nothing in this Act shall prejudicially affect any power, right, or remedy of a landlord, tenant or other person vested in him or exercisable by him by virtue of any other Act or law, or under custom of the country, or otherwise, in respect of a contract of tenancy or other contract," etc., supports this. For this reason the court held that an action for breach of covenant to pay outgoings, not being referred to arbitration by any other provision in the Act, was not so referred by s. 16 (1). So, while the words "arising out of the termination of the holding," in the middle of the list, do not qualify all the items which precede them, the whole catalogue is, it was held, qualified by the words with which it concludes "and any *other* question which under this Act is referred to arbitration," the essential object of the subsection being merely to provide for procedure (a single arbitrator).

The recent case of *R.* v. *Judge Longson, ex parte Wilson*, arose in this way. A tenant of an agricultural holding surrendered his tenancy, it being part of the agreement that

he found a successor. The landlord then agreed to a valuation being made of work done and improvements in accordance with local custom. The valuers found £194 to be due. Shortly afterwards the new tenant abandoned the farm, and the landlord, considering that the outgoer had been guilty of misrepresentation, refused to pay the valuation and when sued counter-claimed for damages. The county court judge considered that he had no jurisdiction in the matter, and the plaintiff asked for a *mandamus*.

The Divisional Court had no difficulty in deciding that the county court had jurisdiction to hear the counter-claim; *Lowther* v. *Clifford* covered this point. But the question of the claim was more troublesome, and here it is necessary to (*a*) state that the subject-matter of the valuation included some improvements which might be the subject-matter of compensation for improvements under the Agricultural Holdings Act, 1923, s. 1 and Sched. I, and (*b*) recall the fact that the claim was based on custom.

For the court held that in so far as the claim turned out to be one for compensation for improvements among those enumerated in Sched. I, arbitration was the only procedure permissible—unless the plaintiff established a claim based on custom of the country.

With respect, *Lowther* v. *Clifford* does not appear to go so far. It is true that s. 1 (1) enacts that where a tenant has made an improvement comprised in the 1st Sched. he shall be entitled at the termination of his tenancy, etc., to obtain compensation representing the value of that improvement to an incoming tenant; and by s. 5 the amount, failing agreement, is to be settled by arbitration. It is also true that s. 1 (3) enacts: "Nothing in this section shall prejudice the right of a tenant to claim any compensation to which he may be entitled under custom, agreement, or otherwise in lieu of any compensation provided by this section." But that surely means that if, say, custom, gives the tenant compensation for something not mentioned in Sched. I, or if it gives him more compensation than the "value of the improvement to an incoming tenant" conferred by s. 1 (1), he is at liberty to invoke the customary right or measure. For s. 5, which I have just mentioned, when prescribing arbitration, expressly covers claims to compensation "whether under this Act, or under custom or agreement, or otherwise"; so the "Nothing shall prejudice . . ." of s. 1 (3) does not seem to extend to remedies as well as to rights.

Another point on which one would have liked to hear more was the possible effect of the agreement for a valuation. We are not told that the landlord agreed to this "without prejudice." In his judgment, Lord Caldecote, L.C.J., observed that it might well be that the landlord's executors would not dispute liability once the counter-claim had been tried, and there might be an arrangement by which a new tenant took over the debt, as was nearly always the case. This provokes the thought that, as there is no necessity for an arbitration under the Act, ever, and the old-fashioned valuation has not fallen into desuetude, could not the tenant have invoked s. 19: "Where any sum *agreed* or awarded, etc., is not paid within fourteen days, etc., it shall . . . be recoverable upon order made by the county court, etc."? For by s. 57 (1) "'agreement' includes an agreement arrived at by valuation . . . and 'agreed' has a corresponding meaning."

Our County Court Letter.

The Wages of Employees at Bombed Premises.

In *Cooke* v. *B. & D. Cohen, Ltd.*, recently heard in the Mayor's and City of London Court, the claim was for £29 15s., being seven weeks' wages as printers' cutter during September and October, 1940. The plaintiff had been in the defendants' employ for twenty-nine years at a wage of £4 5s. a week, payable each Friday. The last of such payments was on the 6th September, but the plaintiff was unable to resume work on the following Monday, the 9th September, owing to the destruction of the defendants' premises by enemy action. The plaintiff gave his name and address to the defendants' manager, who said: "You will hear from me further." The plaintiff then consulted his trade union and registered at the employment exchange, where in due course he received 30s. a week as unemployment benefit. On the 13th September the plaintiff received a postcard from the defendants, worded: "Sorry. Nothing settled at present." No address of origin was given. On the 13th October the plaintiff's trade union secretary interviewed the defendants, at the address of their accountants, in reference to an agreement between employers and workmen in the printing trade with regard to bombed premises. The plaintiff interviewed the defendants at the same address on the 18th October, and was told they were farming their work out. At that season of the year it had been customary for the plaintiff to do work for the defendants at the address of one of their customers. No evidence was called for the defendants, but they contended that (1) the contract was frustrated by the destruction caused by enemy action, (2) a discharge of the contract was to be implied from what took place between the parties, (3) the plaintiff was only entitled to a week's wages, as damages in lieu of notice, because the defendants did not supply him with work. His Honour Judge Ralph Thomas found that the plaintiff had undertaken to work for the defendants, not necessarily at the particular premises originally occupied by them, or on the machines originally in use, but at such premises and on such machines as the defendants might have from time to time, provided the premises were not too far from the plaintiff's home and that the machines were safe. In his capacity as a binder, the plaintiff had occasionally worked for the defendants away from their premises and machines. There was, therefore, no agreement to work at any particular premises or on any particular machines. The question was whether, in these circumstances, a state of affairs had arisen which brought the contract to an end. The relevant judgments on the doctrine of frustration were: that of Lord Dunedin in *Metropolitan Water Board* v. *Dick, Kerr & Co., Ltd.* [1918] A.C., at pp. 127 and 128; that of Lord Sumner in *Bank Line, Ltd.* v. *Arthur Capel & Co.* [1919] A.C., at p. 460; that of Lord Loreburn in *Tamplin Steamship Co., Ltd.* v. *Anglo-Mexican Petroleum Products Co., Ltd.* [1916] 2 A.C., at p. 303; that of Lord Justice Vaughan Williams in *Krell* v. *Henry* [1903] 2 K.B., at p. 749; and that of Lord Parker in the *Tamplin Case, supra*, at p. 423. In the present case, there was no implied term that the employment should be on the footing that the defendants' premises or machines should continue to exist. Had the event been discussed, the inference was that the defendants would have said: "If we lose our premises and machinery we shall find other premises and buy or get the use of other machinery, and get our business going as soon as possible, but we may have to terminate your employment temporarily." It was for the defendants to show that, if such a term were to be implied, the interruption of their business was (in the words of Lord Loreburn, *supra*) "so great and so long as to make it unreasonable to require the parties to go on." The defence of frustration accordingly failed. In view of the third and fourth defences, an amendment of the claim was allowed by the addition of a claim for damages for breach of contract. What was said and done by the parties, after the occurrence, might have affected the contract, although irrelevant on the issue of frustration, as stated by Lord Sumner in *Hirji Mulji and Others* v. *Cheong Yue Steamship Co., Ltd.* [1926] A.C., at p. 509. The plaintiff, by registering as an unemployed man, showed that he did not expect any wages. The position was made clear by the defendants' postcard of the 13th September—the next normal pay day. It was then evident that the defendants intended to pay no more wages, and, as there had been no frustration, they broke their contract. The plaintiff did nothing to accept dismissal without notice, and he was entitled to one week's wages from the 6th September, 1940, and to a further week's wages as damages in lieu of notice. Judgment was given for the plaintiff for £8 10s., with costs on Scale B.

Farm Land and the Rent Acts.

In *Wills-Goldingham* v. *Teakle*, recently heard at Cheltenham County Court, the claim was for possession of a house and 35 acres of land. The plaintiff's case was that in March, 1940, she had let the house and pasture to the defendant, at a rent of £50, for six months, viz., from Lady-Day to Michaelmas. The defendant paid the £50 on the 2nd April and took possession, and was given written notice that the plaintiff would require possession of the house and land at the end of the term. Nevertheless, the defendant had remained in possession, so that the plaintiff was forced to live in a groom's bungalow. The plaintiff farmed 500 to 600 acres, but the field in question was the only one for winter feeding. Although there were separate agreements for the house and land, they had been let together to all intents and purposes. As the Rent Acts did not apply to houses let with agricultural land exceeding two acres, under the 1939 Act, s. 3 (3), the house was outside the Acts. The defendant's case was that he had fifteen cows, three or four horses and five calves on the land. He was living in the house with his wife, son and four daughters, and had been unsuccessful in his efforts to find alternative accommodation. His Honour Judge Kennedy, K.C., gave judgment for £5 1s. 5d. mesne profits and for possession of the house within twenty-one days. The house and land had been let separately, and the house was within the Rent Acts. On the facts, however, greater hardship would be caused by refusing an order than by granting it. The order was therefore made under the Rent, etc., Restrictions (Amendment) Act, 1933, Sched. I, para. (*h*) proviso. The land was outside the Acts, and an order for possession in fourteen days was made, with costs.

To-day and Yesterday.

Legal Calendar.

27 January.—On the 27th January, 1621, Francis Bacon, till then Baron Verulam, was raised to the dignity of Viscount St. Albans in circumstances of peculiar honour. His patent was expressed in the most flattering language, particularly celebrating his integrity in the administration of justice. The Duke of Buckingham supported his robe of state and Lord Wentworth bore his coronet. Yet in only three months time he was to be degraded from the Chancellorship, condemned to an enormous fine and shut up in the Tower of London.

28 January.—On the 28th January, 1793, Lord Loughborough received the Great Seal as Chancellor.

29 January.—In 1902 Suffolk was engrossed by the Peasenhall mystery centring round the trial of William Gardiner. He was married and a father, a foreman at the local works and a leading member of the Methodist congregation at nearby Sibton, where he was choirmaster. Local gossip, however, linked him scandalously with Rose Harsent, a village belle and a member of his choir, who was servant at a house opposite his cottage. One morning she was found at the foot of the stairs leading to her room, her throat cut and her night things partly burnt. In three months she would have been a mother. Several circumstances cast grave suspicion on Gardiner and he was twice tried at Ipswich for murder but, the juries failing to agree, a *nolle prosequi* was lodged on the 29th January, 1903, and he went free.

30 January.—On the 30th January, 1661, Evelyn recorded: "This day (O the stupendous and inscrutable judgments of God!) were the carcases of those arch rebels Cromwell, Bradshaw the judge who condemned His Majesty, and Ireton, son-in-law to the Usurper, dragged out of their superb tombs in Westminster among the Kings, to Tyburn and hanged on the gallows there from nine in the morning till six at night and then buried under that fatal and ignominious monument in a deep pit, thousands of people who had seen them in all their pride being spectators." The day was the anniversary of the execution of Charles I.

31 January.—On the 31st January, 1823, there was something of a scene in the Court of King's Bench. The Lord Chief Justice began by intimating that as it was important that cases in which a rule *nisi* for a new trial had been granted should be disposed of as soon as possible, it was desirable that juniors should not address the court after their leaders unless some important point had been omitted. The first case came on, and the leader spoke for nearly three hours. Then the junior rose and "as the first victim of this regulation," expressed the hope that it would not be applied at all times and in all cases as, if permanently adopted, it "would make a desert of these benches and deprive juniors of the Bar of those opportunities of addressing the court which may give them experience and a just confidence in their powers." The Chief Justice then expressed his concern that such a remark should be made, said it was with pain that in the state of public business the court would refrain from hearing counsel and added that the word "victim" might have been omitted in the protest.

1 February.—On the 1st February, 1832, George Beck, George Hearson and John Armstrong were hanged at Nottingham for their part in a riot when a silk mill was burnt. Disorders had flared up all over England and feeling ran high. The 15th Hussars were on duty in the streets and the 18th Foot occupied the gaol and the Church opposite the courthouse. On the scaffold Hearson was much affected and alternated between deep devotion and frantic dancing, but Armstrong said: "None of that, George. It is not sense. I must say that I am innocent because I am so, but I'll have none of this." As they died the crowd cried "Murder!" and "Blood!"

2 February.—Abraham Hayward led a very satisfactory life as a literary barrister. Born in 1801 he joined the Inner Temple in 1824 and was called to the Bar. He became editor of the "Law Magazine," he printed a translation of Gœthe's "Faust," he became an authority on gastronomy and his dinners at his Temple chambers became famous for distinction of company and choiceness of fare. Though he had only a small practice, his friend Lord Lyndhurst made him a Q.C., in 1845. He also entered the political field. He had wide reading and knack for anecdotes, a generous heart and a biting tongue. He died on the 2nd February, 1884.

The Week's Personality.

"When I look back upon this noble person at Edinburgh in situations so unworthy of his brilliant powers and behold Lord Loughborough at London the change seems like one of the metamorphoses of Ovid." So wrote Boswell of his fellow countryman who became Lord Chancellor. Another Scot, once a gardener's boy in the employment of his family, who had seen him fiercely attacked by a turkey-cock as a child of four, was less impressed on being taken to see him in the Court of Chancery. "Weel, weel," he said, "he may be a great mon noo, but I mind fine he was ance sair hadden doon by his mither's bubbly jock." Lord Loughborough had left the Scottish Bar as the result of a scene in court in which he had fearlessly bearded the Dean of the Faculty, a man whose insolent rudeness to the advocates had made him generally hated. At the English Bar his talents inevitably made him a great career, but it was only after many disappointments and many political twistings, some of them not creditable, that he finally received the Great Seal from the King at Buckingham Palace. In the coach going home he showed it delightedly to his wife, though he afterwards said he was still a little afraid that he might awake and find he had been deluded by a pleasing dream. He made a good judge, courteous alike to the Bar and to the litigants. Even his rival and enemy, Thurlow, had to admit that "he was a gentleman."

Rebuilding the Temple.

Much talk of rebuilding is going about the Temple and it is worth looking forward to, for on the manner of it will depend a whole way of life. Probably we can count on being spared the worst horrors of modern architectural megalomania or bulk for the sake of bulk and the bigger the better, but are we so safe from the flat block and office block cult on the altar of which Clifford's Inn was so shamefully sacrificed? It would be a black day if the Temple with its long pageant of varied human personality ever accepted as normal a standardised life and a lowered vitality. Good architecture takes equal account of historic tradition and current human needs, but the modern reaction from such ill Victorian copyism as the Gothic Law Courts now too conscientiously discounts the former. Nor does good building, when it creates dwelling and working places, forget how much the human being who is complete needs grace, good proportion and withal a certain intimacy in his surroundings. When rebuilding comes let not the judgment of one who knew the Temple well be forgotten: "One of the doorways in King's Bench Walk shows more thought, more knowledge, more just ideas of architectural proportion and more mechanical skill than all the new buildings in the Middle Temple." Let none rebuild without that knowledge, those just ideas, that skill. These and not "up to date" or "out of date" are the tests of good work.

Lessons from the Past.

Do you remember Tom Taylor's verses?

"They were fusty, they were musty, they were grimy, dull and dim,
The paint scaled off the panelling, the stairs were all untrim;
The flooring creaked, the windows gaped, the doorposts stood awry,
The wind whipt round the corner with a wild and wailing cry.
In a dingier set of chambers no man need wish to stow
Than those, old friend, wherein we denned at 10 Crown Office Row.

"Good-bye old rooms where we chummed years, without a single fight,
Far statelier sets of chambers will arise upon your site.
More airy bedrooms, wider panes, our followers will see,
And wealthier, wiser tenants the Inn may find than we,
But lighter hearts or truer I'll defy the Bench to show
Than yours, old friend, and his who penned this 10 Crown Office Row."

Down they did go, to be replaced by the graceless Victorian structures now happily annihilated by explosives, though if one had to choose between evils, surely the bad old which lived even in decay was better than the bad new which never lived at all. But leave them aside and call on Lamb in Inner Temple Lane, before the workhouse structures of Dr. Johnson's Buildings: "I have two rooms on third floor and five rooms above with an inner staircase to myself and all new painted, etc., and all for £30 a year . . . The rooms are delicious . . Hare Court trees come in at the window, so that it's like living in a garden." When we rebuild the Temple could we do better than that for living or working?

The Judicial Committee of the Privy Council commences its sittings for the Hilary Term on 4th February with a list of seventeen appeals. One is from Canada, one from Trinidad and Tobago, one from Jamaica, two from Palestine, one from the Straits Settlements, and eleven from India and Burma. Two judgments await delivery.

Notes of Cases.

COURT OF APPEAL.

Watson *v.* Sutton District Water Co.

MacKinnon, Luxmoore and du Parcq, L.JJ. 16th July, 1940.

Water—Householder's temporary absence from house—Request to water undertakers to "cut off" supply—Request complied with by turning off stop-cock—Stop-cock turned on by stranger—Damage to house by flooding—Undertakers liable.

Appeal from a decision of Lewis, J. (84 Sol. J. 467; 56 T.L.R. 787).

The plaintiff was the occupier of a house in the district for which the defendant company were the water undertakers. As the house was to remain unoccupied for a time, her son on her behalf wrote to the company asking them to "cut off" the water supply to the house. The company wrote agreeing to do so and in fact sent an employee who turned off a stop-cock situated in the public street outside the house. The plaintiff's son then went to the house and drained the cistern, pipes and other containers. The stop-cock was housed in a pipe covered by a lid to which no lock was fitted. The tap could easily be operated with either a turnkey or a piece of wood; it was accordingly possible for any stranger to turn it on or off. In fact, while the house was unoccupied, some unauthorised person did, unknown to anyone concerned, turn the stop-cock on again, so that water flowed back into the house, filling the cistern and pipes. A sharp frost having occurred, one of the pipes burst, and the plaintiff's son when he next visited the house found that extensive damage had been caused by flooding. The plaintiff accordingly brought this action, contending that the company had disobeyed the instructions given to them in that they had failed to cut off the water effectively. The defendants contended, *inter alia*, that they had cut off the water in accordance with the instructions given to them.

MacKinnon, L.J., said that the request of the plaintiff and the assent of the defendants must, as a contract between them, be construed in the light of the words used and of the knowledge possessed by those who used them. It is not to be supposed that the plaintiff or her son knew that there was this stop-cock outside her house, still less that they knew that it was, in fact, the property of the plaintiff's landlord as the freeholder of the house. When the plaintiff's son wrote and asked the defendants to "cut off" the water supply, he was using the language of the defendants themselves, who had said that if a certain sum due were not paid they would cut off the water. When the son asked the defendants to cut off the water supply to the plaintiff's house, he was entitled to assume that they would do something which would effectively cut off the supply and make it impossible for any water to get back into the house during his absence. In fact, they did nothing of the sort. They merely turned off a tap which to their knowledge could be turned on again by anybody. The appeal would be dismissed.

Luxmoore and du Parcq, L.JJ., agreed.

Counsel: *Wallington*, K.C., and *Beney*; *Shawcross*, K.C., and *H. M. Pratt* (for *E. White*, on war service).

Solicitors: *Spencer, Gibson & Son*; *Reid, Sharman & Co.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

In re Diplock, Wintle *v.* Diplock.

Greene, M.R., Clauson and Goddard, L.JJ. 15th January, 1941.

Will—Construction—Bequest to "charitable or benevolent object or objects"—Uncertainty—Validity.

Appeal from a decision of Farwell, J. (84 Sol. J. 524).

The testator, who died in 1936, after appointing executors and making certain pecuniary bequests, by cl. 5 gave a number of charitable legacies. By cl. 6 he gave the residue of his estate to his executors upon trust for sale and conversion, and he directed them to apply the net residue of the proceeds of sale "for such charitable institution or institutions or other charitable or benevolent object or objects as my acting executors may in their or his absolute discretion select, and to be paid to or for such institutions and objects if more than one in such proportions as my executor or executors may think proper." The testator's executors proceeded to administer his estate and they distributed the net residue, which amounted to somewhat over £250,000, between some 139 charitable institutions. Subsequently, the testator's next of kin raised the question whether the gift of residue was not invalid on the ground that it was not charitable. The executors thereupon issued writs against the charities calling upon them to repay the various sums which they had been paid. As a preliminary step the executors took out this summons asking whether the trust declared by cl. 6 of the will was a valid charitable trust or whether it was void for uncertainty. The defendants to the summons were certain of the testator's next of kin, two of the charities and the Attorney-General. Farwell, J., held that there was no binding authority which compelled him to hold that in every case the words "charitable or benevolent" must be construed so as to render a gift of this kind invalid. The testator having shown an overriding intention to benefit charity in the legal sense the gift of residue operated as a good charitable gift. The next of kin appealed.

Sir Wilfrid Greene, M.R., allowing the appeal, said there were two matters for the consideration of the court: first, the true construction of the testator's will, and secondly, the legal principles applicable to the will so construed. There was no doubt as to the principles to be applied; the question was one of construction. The cardinal rule of construction was that words were to be construed in their natural and grammatical sense unless there was something in the context of the will which imposed a different meaning on them. Taking the language of the will in its natural and grammatical meaning, it did not seem to him to be open to doubt that the testator was giving to his trustees an option to apply his residue: either (1) to a charitable institution or institutions; (2) to some other charitable objects, or (3) to some benevolent object or objects. The word "or," in the absence of some restraining context, must be read disjunctively. It had been contended that the word "or" should be read as "and," or omitted altogether. There was no principle of construction which would justify doing such violence to the language. It was also suggested that the word "benevolent" had changed its meaning and was now co-extensive with the word "charitable." In his view the word "benevolent" went beyond the legal meaning of the word charitable. There was no context in the will to give to the word "benevolent" a more limited meaning. The order below must be reversed and an order made declaring that the residue of the testator's estate was undisposed of and devolved as on an intestacy.

Clauson and Goddard, L.JJ., gave judgments to the like effect.

Counsel: *Romer*, K.C., and *C. L. Fawell*; *Leonard Stone*; *C. E. Harman*, K.C., and *H. H. King* (for *W. S. Wiggleswortb*, on war service); and the *Attorney-General* (Sir Donald Somervell, K.C.), appeared with *A. Andrewes Uthwatt*.

Solicitors: *White & Leonard*; *Preston, Lane-Claypon & O'Kelly*; *Thomas Eggar & Son*; *Treasury Solicitor*.

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

HIGH COURT—CHANCERY DIVISION.

Re White, Mastaka *v.* Midland Bank Executor and Trustee Co., Ltd.

Farwell, J. 15th January, 1941.

Will—Testatrix makes no provision for daughter—Husband of testatrix a Russian—No evidence as to his whereabouts or domicil—Application by daughter for maintenance—Jurisdiction—Inheritance (Family Provision) Act, 1938 (1 & 2 *Geo.* 6, *c.* 45), *s.* 1.

Adjourned summons.

The testatrix married in 1920 a Russian. Shortly after the marriage they separated. She had one child, a daughter, the plaintiff. In 1921 the testatrix handed her daughter to W, who had brought her up. For five years the testatrix paid 15s. a week to W for the maintenance of the daughter. Subsequently she paid nothing, but she continued to see her daughter and at one time offered to make a home for her. The daughter, however, refused to leave W. The testatrix, who died in 1939, made a will disposing of her property between certain legatees and she made no provision for the daughter. The daughter took out this summons under the Inheritance (Family Provision) Act, 1938, asking that reasonable provision might be made out of the estate of the testatrix for her maintenance. Section 1 of the Act provides that: "Where, after the commencement of this Act, a person dies domiciled in England leaving . . . a daughter . . ." the court may order reasonable provision to be made for the daughter's maintenance. No evidence was filed as to what had become of the husband of the testatrix or where he was or what his domicile was at the time of her death.

Farwell, J., said that s. 1 of the Act required that the plaintiff should prove that the testatrix had died domiciled in England. That evidence was not forthcoming. It might be that the husband of the testatrix had lived in this country all his life and that both he and the testatrix were domiciled here. This had not been proved, and in the absence of such proof it was not open to him to make an order. Apart from that, even if it was open to him, he would not feel inclined to do so. The case was unusual. The testatrix had not contributed to the daughter's support since she was five. It appeared that she did not consider herself to be under any obligation to provide for the daughter, who had never asked for assistance. In these circumstances, whatever the obligation of the testatrix may have been when the daughter was very young, she may have thought she was under no further obligation. The court ought not to interfere to deprive the beneficiaries under the will of what had been given to them.

Counsel: *A. S. Diamond*, for the plaintiff; *L. M. Jopling*, for the defendants.

Solicitors: *H. Roland Thomas*; *Douglass & Weaver*.

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

HIGH COURT—KING'S BENCH DIVISION.

Fulham Borough Council *v.* A. B. Hemmings, Ltd.

Humphreys, Atkinson and Croom-Johnson, JJ. 31st July, 1940.

Factories and workshops—Bakehouse—Local authority's withdrawal of certificate of suitability—Appeal to magistrate—Adjournment—Interim improvement of premises—Magistrate's refusal to confirm certificate—Validity—Factories Act, 1927 (1 *Edw.* 8 *and* 1 *Geo.* 6, *c.* 67), *s.* 54 (3).

Appeal from a decision of the West London Police Court stipendiary magistrate under s. 54 (3) of the Factories Act, 1937.

The Fulham Borough Council withdrew certificates of suitability held by the respondent company, complaining that the ventilation at certain of the respondent company's bakehouses to which the certificates related was unsatisfactory. Notice to withdraw the certificates was given by the borough council on 12th May, 1939. The company appealed to West London Police Court, and the matter first came before the magistrate on 23rd June, when it was adjourned until the 20th July. Between those dates the company installed at the premises an air-conditioning plant which resulted in the ventilations being admitted perfect. The magistrate, holding that he was not restricted to the consideration of the state of the premises at the date of the notices, but was entitled to regard the altered conditions arising from the installation of the air-conditioning plant, directed that the certificates of suitability should continue to operate. The borough council now appealed.

HUMPHREYS, J., said that the appeal to a court of summary jurisdiction under s. 54 (3) of the Act of 1937 was not brought merely to decide whether or not some act done in the past was correctly done. By the subsection "the Court may, if it is satisfied that the bakehouse is "—not "was "—" suitable . . . by order direct that the certificate [of suitability] shall continue to operate . . ." The proceedings before the magistrate were analogous to those in which a court was asked for an order to abate a nuisance. No court would make an order to abate a nuisance which had been abated by the time the proceedings came before the court. The magistrate was right in holding that he could consider the altered conditions arising from the installation of the air-conditioning plant. *R.* v. *Montagu*, 49 J.P. 55, was, perhaps, a little nearer to the present case then *Marriott* v. *Minister of Health* [1937] 1 K.B. 128; 80 SOL. J. 532. There the court had had to consider the position of a licensed house which had certain privileges attaching to it, one of the privileges being that the renewal of the annual licence could not be refused except on certain grounds, one of which was that the premises were not qualified by law. The question arose what was the position where, at the date when the matter originally arose and opposition was made to the renewal of the certificate, the premises were not qualified by law, but where, in between that date and the date when the matter became ripe for the decision of the justices, the premises had been made suitable. The decision was that the justices were bound to deal with the facts as they found them at the time when they had to determine the matter. That case might be of some little assistance, but the matter really fell to be decided on the plain language of s. 54 (3). On that language the magistrate was right. The appeal should be dismissed.

ATKINSON and CROOM-JOHNSON, JJ., agreed.

COUNSEL: *Greaville Sharp* and *Aegherinos* (*J. W. Morris*, K.C., with them); *Laski*, K.C., and *Astell Burt*.

SOLICITORS: *The Town Clerk*, Fulham; *Sturton & Sturton*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Dollman and Another *v.* A. & S. Hillman, Ltd.

Asquith, J. 14th November, 1940.

Nuisance—Butcher's shop—Piece of fat on pavement—Pedestrian injured by slipping—Liability.

Action for damages for negligence and/or nuisance.

As the plaintiff, Mrs. Dollman, was walking along the pavement in High Road, Willesden, at about 4.50 p.m. on the 8th October, 1938, outside one of the shops where the defendant company carried on the business of butchers, she slipped on a piece of fat which, she alleged, had come on to the pavement from the shop, and fell, breaking her thigh. She and her husband accordingly brought this action, the latter claiming in respect of expenses incurred by him.

ASQUITH, J., said that the plaintiffs had contended that, by permitting a piece of fat to be where it was on the pavement, the defendants were guilty of negligence; alternatively, that its presence there constituted a nuisance. He found as a fact that Mrs. Dollman's fall was caused by her slipping on a piece of fat which came from the defendants' shop. The question was whether the fat came to be where it was through the defendants' negligence or in such circumstances as to constitute a nuisance. In the absence of evidence to show how the piece of fat came to be on the pavement—to show whether it fell from a stand near the doorway or was carried out on a customer's shoe—a liability must be established which would arise in whichever of those ways the fat had reached the pavement. Assuming that it had done so on the shoe of a customer, it might appear doubtful whether the accident was caused by the defendants' negligence. It remained to consider the question of nuisance. The circumstances in which such a liability arose had been considered recently in *Pope* v. *Fraser and Southern Rolling & Wire Mills, Ltd.* (1938), 83 SOL. J. 135; 55 T.L.R. 324, where *Midwood & Co., Ltd.* v. *Manchester Corporation* [1905] 2 K.B. 597, and *Noble* v. *Harrison* [1926] 2 K.B. 332; 70 SOL. J. 691 were cited. The former of those two cases decided that if a nuisance were created on the highway liability arose irrespective of negligence. The latter established the principle that a person was liable for a nuisance constituted by the state of his property (1) if he caused it; (2) if by neglect of some duty he allowed it to arise; and (3) if when it had arisen he omitted to remedy it within a reasonable time after he did, or ought to have, become aware of it. The third of those propositions was material here. He (his lordship) found that the defendants' servant who was watching Mrs. Dollman as she approached the shop should have become aware of the presence of the piece of fat before she reached it. The defendants were therefore liable unless they could show contributory negligence on her part. There was no such negligence, and there must be judgment for Mrs. Dollman for £300 in respect of her injuries, and for Dollman for £169 special damages.

COUNSEL: *Stuart Horner*; *Scott Cairns*.

SOLICITORS: *Edgar H. Hiscocks*; *P. R. Kimber*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Books Received.

Tax Cases. Vol. XXIII. Part IV. London: H.M. Stationery Office. Price 1s. net.

Loose-leaf War Legislation. 1940–41. Part 4. Edited by JOHN BURKE, Barrister-at-Law. London: Hamish Hamilton (Law Books), Ltd.

The Law of Income Tax. By His Hon. Judge KONSTAM, K.C. Eighth Edition. 1940. Royal 8vo. pp. xcviii and (with Index) 860. London: Stevens & Sons, Ltd.; Sweet and Maxwell, Ltd. Price £2 12s. 6d. net.

The Scottish Law Directory for 1941. Fiftieth Year. pp. 516. Edinburgh: William Hodge & Co., Ltd. Price 12s. 6d. net.

Obituary.

MR. S. BAKER.

Mr. Spencer Baker, solicitor, of Doncaster, died recently. He was admitted a solicitor in 1902.

On Active Service.

SECOND-LIEUT. JOHN DEREK HOYLE.

Second-Lieut. John Derek Hoyle, of the Lancashire Fusiliers, has been killed on active service. He was associated with Messrs. Cobbett, Wheeler & Cobbett, of Manchester, and was admitted a solicitor in 1939.

FLYING OFFICER VICTOR ARTHUR RENDELL.

Flying Officer Victor Arthur Rendell, of the Royal Air Force, has died on active service. He was a partner in the firm of Messrs. Rendell & Kitto, of Southend-on-Sea, and was admitted a solicitor in 1939.

SECOND-LIEUT. GEORGE HENSON WALLER.

Second-Lieut. George Henson Waller, of the Royal Army Service Corps, has died on active service. He was a partner in the firm of Messrs. Waller & McCarraher, of Southampton, and was admitted a solicitor in 1930.

Legal Notes and News.

Honours and Appointments.

The King has approved a recommendation of the Home Secretary that Mr. DANIEL HOPKIN, M.P., be appointed a Metropolitan Police Magistrate to fill the vacancy caused by the death of Mr. Herbert Metcalfe, Magistrate at Old Street Police Court. Mr. Hopkin has been Labour M.P. for Carmarthen since 1935, and his appointment will cause a by-election. He was called to the Bar by Gray's Inn in 1924.

Notes.

The Middle Temple Common Room is now being used as the Middle Temple library. Members of the Inner Temple will be admitted while their library is out of commission. Luncheons for members of the Inner Temple are served in Niblett Hall, and for members of the Middle Temple in Middle Temple Parliament Chambers, the entrance to which is in Middle Temple Lane.

LEGAL AND GENERAL ASSURANCE SOCIETY, LIMITED.

The new business statement for 1940 shows that 10,851 policies were issued assuring sums totalling £9,628,648. These figures include the decreasing term and group section of the business which accounted for 2,036 policies assuring £5,398,654; 506 immediate annuities were issued in connection with which the consideration money received amounted to £529,526, compared with 740 immediate annuity bonds for £835,912 consideration money in 1939. At the outbreak of war it was held in many insurance quarters that Group Life and Pension business would be adversely affected. It is interesting to note, therefore, that the Society, which is the pioneer of this type of business, issued during 1940 new group policies for sums assured amounting to £4,047,766 against £4,061,832 in 1939.

The Law Society.

SPECIAL GENERAL MEETING.

The President, Lieut.-Colonel SAMUEL TOMKINS MAYNARD, took the chair at a special general meeting of The Law Society, held in the Society's Hall on the 24th January. In his opening address he paid tribute to the memory of over thirty members and their clerks who had lost their lives in the cause of freedom. He also expressed the Society's sympathy with the injured and the relatives of those who were prisoners of war. Members of the profession had between them already earned two Distinguished Flying Crosses, one Distinguished Service Cross, three Military Crosses, four Orders of the British Empire, and one British Empire Medal; a lady member of the Society's staff had been awarded the George Medal for work as an air-raid warden. He lamented the death of Mr. Mortimer, who had died with tragic suddenness early in December. Mr. Mortimer had been a member of the Council since 1924 and an outstanding member of the profession in the City of London. The Society had also lost through death the services of Mr. Taylor, one of its honorary auditors, and the Council had appointed in his place Mr. F. P. Cheeseman. On behalf of the meeting he congratulated Sir Randle F. W. Holme on the knighthood which His Majesty had bestowed on him.

Turning to the matters which had been occupying the Council's attention during recent months, the President remarked that under the Emergency Powers (Defence) (No. 2) Act, 1940, emergency courts might be set up. As a result of representations made to the Attorney-General, The Law Society had been able to secure not only the right of legal representation for persons to be tried by those courts, but also a right of audience for solicitors. The Society were indebted to Major Milner for his assistance in the House of Commons in obtaining these concessions.

As a result of a request received from Sir Robert Kindersley, the President had addressed a letter to every member of The Law Society appealing for help in the sale of national war bonds and other Government issues. He had received a number of interesting replies from members, many of whom were occupying important positions in local government affairs. Several helpful suggestions had been forwarded to Sir Robert. In consequence it had now been made clear that, whatever the limit imposed upon the holding of Government securities by any one person, a person might have as many trust holdings as he wished, each up to the limit, if he were described as a trustee. Moreover, the Treasury now allowed application to be made for War Bonds for £100 and over through the Bank of England in multiples of a penny.

The Council had invited solicitors to notify the Secretary if they were able to offer accommodation to professional colleagues whose offices had been destroyed by enemy action. A special register of emergency accommodation had been made, by means of which a number of solicitors had been helped in their trouble. Owing to evacuation of certain Government offices from London, delay had inevitably occurred in Land Registry searches. As a result of representation, an order had been issued extending the protective period given by official search and priority notices to fourteen days. Counsels' fees had in certain cases been disallowed on taxation because counsel were absent on national service and could not sign the voucher. A rule had been made, at the request of the Council, empowering the Secretary of the Bar Council, or another barrister who was so authorised, to vouch for fees. The Inland Revenue Department had supplied the Council with a list of district valuers, so that on application the Council might inform members with whom they should communicate when claiming compensation for war damage to property.

By the Control of Maps Order no one might sell, distribute, dispose of or part with the possession of a large-scale map except to a person licensed to receive it. The Council had pointed out the difficulty caused by this rule to solicitors in conveyancing matters. The Home Office had intimated that the order did not apply to plans acquired or disposed of by solicitors in conveyancing with which they were concerned professionally. Solicitors, however, who acquired maps, as opposed to plans, must obtain licences. Secrecy was properly attached to declarations of evacuation areas, but in certain cases solicitors needed to know whether property was situated within an evacuation area or not, so as to be able to advise clients upon the moratorium provisions. The Council had arranged with the Ministry of Home Security that the secretary of the Society should have copies of all declarations and be permitted to answer specific inquiries made in writing by solicitors who satisfied him that they were professionally interested in receiving the information. The profession were doing their best to carry on the Poor Persons Procedure, but the task was becoming more and more difficult owing to the number of solicitors and their clerks who had been called up for military service, and to serious decrease in the number of counsel available. The President paid tribute to members of the profession who had kept this important work going.

The Council had been actively engaged in re-drawing rr. 4 and 5 of the Accounts Rules so as to remove doubts and make the operation of the rules easier for the profession. The proposed new rules and an explanatory memorandum had been published in the January issue of the Society's *Gazette*, and observations upon them would be carefully considered. The introduction by the Government of the War Damage Bill would be welcomed by the profession and public alike. The Bill would be a great advantage to owners of property and mortgagees, and particularly to building societies and their supporters. The Council's only regret was that such a Bill had not been introduced on the outbreak of war, in accordance with their advice and that of many other professional bodies. The Parliamentary Committee had carefully considered the Bill, and The Law Society had participated in a joint committee convened by the Association of British Chambers of Commerce and containing representatives of the Federation of British Industries, insurance companies, building societies and other bodies representative of those interested in property. The practical suggestions which had been received should improve the Bill in some of its details. The Council had been both gratified and touched by the kind offers which they had received from many of the Provincial Law Societies in Canada, offering to receive the children of members of the profession and of the Bar of this country. The President read a telegram of gretings and admiration of The Law Society's services and fortitude, received recently from the Incorporated Law Institute of New South Wales.

THE SOLICITORS' BILL.

A Solicitors' Bill, the President continued, had passed through all its stages in the House of Lords last year, but when it had come before the Commons, facilities for its progress could only have been granted if the Government whips were satisfied that it was not contentious. Unfortunately, exception had been taken by certain members to the provision in cl. 19 that rules could be made under the Solicitors Act, 1933, to prevent undercutting by enforcing the minimum scale of charges made by local law societies—subject, of course, to the rules being approved by the Master of the Rolls. Negotiations had taken place with the objectors, and the Council had offered to insert amendments in the clause to give those who objected to the rules an opportunity to be heard before any rules were made. Owing, however, to these negotiations the Bill could not be passed during the last session of Parliament, and it had therefore lapsed. It was being reintroduced in the House of Lords as early as possible, with the object of carrying out the mandate which had been given to the Council at the special meeting held in February, 1940, to discuss proposals for an indemnity fund, the inspection of accounts and compulsory membership of The Law Society. The concessions which had been offered to the objectors to cl. 19 had been incorporated in the Bill, together with certain drafting amendments which had been considered desirable. The Society were much indebted to Lord Wright for the trouble he had taken over the Bill by sponsoring it in the House of Lords, and for promising to reintroduce it, and also to Sir Harry Pritchard, chairman of the Parliamentary Committee, for all his work on it.

DEFERRED MILITARY SERVICE.

Some time before the outbreak of the war a deputation from the Council had waited on Sir John Anderson, then Lord Privy Seal, to discuss with him the register of solicitors which they proposed to prepare so that the best use could be made of solicitors' services if war should ensue. The question had arisen whether the profession was overcrowded, and the deputation had been bound to admit that it was. The deputation had therefore been informed that solicitors could not be included in the schedule of reserved occupations. Sir John had approved of the proposals made by the Council, which had therefore proceeded to prepare the register. A questionnaire had been sent out to all solicitors, the results had been analysed, and copies had been forwarded to all Government departments, including the Ministry of Labour and the Public Appointments Committee. The register had been found most valuable, and a large number of solicitors had received appointments through its agency in Government departments. From the register the Council had been able to foresee how depleted the profession was becoming. Before the depletion had become appreciable, in March, 1940, they had approached the Lord Chancellor to find out whether they could advise him in cases in which they considered it essential for the carrying-on of a practice that deferment should be granted. He stated that he had been asked by the Minister of Labour to advise him on applications for deferment which in his opinion should be granted in the vital national interest. The Lord Chancellor had welcomed the Council's assistance, but had declared that he would place a very strict interpretation on the words "of vital national importance."

Owing to the rapidity with which the various age groups were being called up, the position had rapidly changed, and on 19th April, 1940, the Council had asked the Lord Chancellor to receive a deputation for the purpose of urging upon him the necessity of solicitors being included in the schedule of reserved occupations at age thirty. He had replied that the Council should address themselves on this matter to the Minister of Labour, and on the 23rd May the Council had attended by deputation and seen Mr. Ernest Bevin. The deputation had pointed out that in the Council's opinion the time had now arrived for this step to be taken if the law were to be adequately administered. Mr. Bevin had been unable to grant the request. He pointed out that a solicitor or his clerk under thirty might well be essential in their civil occupation, while many solicitors and their clerks over thirty could well be spared. He proposed as an alternative to ask The Law Society to recommend

cases where deferment should be granted. He would trust the Council to hold the scales fairly between the needs of the profession and those of the fighting forces.

Next day, on the 24th May, the Council had accepted the offer and set up a Military Service Deferment Committee, appointing eight panels for London and eighteen for the provinces, to hear applications. The panels included 155 solicitors, of whom thirty-one were members of the Council. By the end of December the panels had received over 2,280 applications, including renewals. Of these, 104 had been withdrawn before hearing. The committee had received 1,255 decisions, and had not recommended deferment in 335 cases. Deferment for varying periods up to six months had been granted in the remaining 920 cases, six months being the longest period for which deferment had been recommended, because of the probability of radical change in the country's requirements of man power.

Difficulties had soon arisen. There had been considerable delay in obtaining decisions from the Ministry of Labour so that some applicants had been called up before their cases had been decided and had suffered hardship. In many instances also the recommendations of the Council had been varied. The reason for this might have been a lack of accord between the Council on the one hand and the Lord Chancellor and Ministry of Labour on the other, concerning the principles to be adopted in dealing with applications. On the 24th August a deputation from the Council had attended at the Lord Chancellor's Department and submitted the draft of a letter which the Council proposed to send out to the panels explaining the principles upon which cases should be decided. On the 2nd October the President had seen Sir Claude Schuster and discussed the difficulties, and whether it was possible to expedite the procedure. He had also received back the draft letter embodying the views of the Lord Chancellor and the Ministry of Labour. The President had been able to arrange on behalf of the Council for weekly conferences to be held between the secretary of the Society and representatives of the Lord Chancellor's department, so that doubtful cases could be discussed before an adverse decision was reached. The Council had also been given permission to inform unsuccessful applicants as soon as the recommendation concerning them had been forwarded to the Lord Chancellor's department.

The profession, concluded the President, was now becoming so depleted that if it were depleted any further it would be unable adequately to continue its work, to the detriment of the public interest. Delay would be caused in the collection of the large sums in duty and other revenue which solicitors collected for the State, and the work of the Poor Persons Procedure would be much handicapped. The help which solicitors gave in various aspects of social services would have to be reduced. The Council had therefore decided to urge upon the Minister of Labour that solicitors and their clerks should now be placed in the list of reserved occupations at age thirty-six, and that the existing system of deferment should be continued for those under that age. At a conference held on the 3rd January between representatives of the Council, the Lord Chancellor's department and the Ministry of Labour it had appeared unlikely that the Council's request would be conceded in full. Negotiations were, however, continuing.

Owing to the war the provincial meeting had not been held, and members had therefore had to forego the pleasure of a visit to Bath. The President had, however, been able to attend the annual meeting of the Welsh Society at Swansea, and to give them an account of the work of the Council, and to meet many Welsh members. With Sir Randle Holme and Mr. Lund, the secretary, he had attended a special meeting of the Yorkshire Union of Law Societies at Leeds, where the question of deferment of military service had been fully discussed, and the meeting had emphatically approved of the steps the Council had taken. The President's open offer to discuss matters with members had often been taken advantage of, and he had had several discussions with London members on various questions which specially appealed to them.

Remuneration in Poor Persons' Cases.

Mr. Ambrose E. Appelbe moved—

That in view *inter alia* of the fact that there is in some cases more than a year's delay in the allotment of Poor Persons' matrimonial causes after the application is accepted, solicitors be encouraged to undertake such cases by being permitted £5 in each case towards the solicitors' general office expenses, to be paid by the poor person, through the Society, after the hearing of the case, in addition to any disbursement now permitted.

The President remarked that the Council would welcome in principle a discussion whether in these days of distress the conducting solicitor should be allowed some payment towards his overhead charges in addition to his out-of-pocket expenses.

Mr. Appelbe said that last July he had undertaken a Poor Persons' case which had been accepted by the Poor Persons Committee some fourteen months before. The delay had been due to the impossibility of finding a solicitor to undertake the case. The reasons why solicitors would not undertake these cases were manifold. The procedure was very cumbersome and involved a certain amount of work which ordinary cases did not. The petition was often settled by inexperienced counsel using out-of-date forms, and was wrongly conducted in court so that an undeserved reflection was cast upon the solicitor. An action for negligence also lay against the solicitor, and the judge might rebuke him for the apparent delay, although he himself was not in court and could not point out that he was not to blame. Lastly, these cases actually cost the solicitor considerable sums. Letters from provincial solicitors indicated that each Poor Persons case cost about £20 in overhead charges and that the £5 which the motion suggested was ridiculously small. As an experiment, he had undertaken ten test cases, which would cost him £240. He hoped the payment he suggested would not be called costs. The use of the word "costs" in a Poor Persons case was most misleading, for it suggested that solicitors received a fee from the State. Poor clients often thought that some sort of panel system existed, akin to the poor persons defence system in criminal cases.

Mr. F. G. Jones, seconding the motion, remarked that in some cases, after the solicitor had been paid his out-of-pocket expenses from the £5 deposit which the poor person was usually required to give, the poor person received the balance. Where a substantial service was done for the client, and especially where a woman client would, on obtaining her divorce, marry a man with means, no hardship would be caused if the solicitor were given the balance of the deposit.

Miss Carrie Morrison warmly supported the motion. On a recent visit, she said, the secretary of the Poor Persons Committee had told her that he had about 1,000 cases in arrears. The delay was a great hardship to the applicants. It was impossible for a solicitor to do an unlimited number of these cases entirely free, as the overhead expenses were too heavy. They were often far more difficult than the cases of paying clients. Even a small honorarium would be a help, for the cases required a great deal of typing and the time of messengers spent in looking for counsel who would take the case. She suggested that, at any rate in the present circumstances, solicitors should be allowed to conduct these cases, which were often far simpler than some of the matrimonial cases which they conducted habitually in the police courts.

Mr. S. L. Samson vigorously opposed the motion. He claimed to undertake as many Poor Persons cases as any other solicitor, and denied that in any case over a year elapsed before a solicitor was allotted in cases where the applicant paid the deposit with the application. There had been no delay until Herbert's Act had so greatly increased the number of Poor Persons applications. The average time it took a poor person to find the £5 deposit was between seven and eight months; to impose another £5 would much increase this interval and defeat the ends of justice.

Mr. A. C. Crane feared that if the motion were adopted it would lead to another public outcry against the law's delays. He also declined to believe without further evidence that there was a delay of over a year in the hearing of many Poor Persons cases. Many applications should never be made under the Poor Persons Procedure, as the petitioner had undisclosed means or opportunities of paying of ordinary proceedings.

Mr. E. A. Williams (Secretary of the Herts Law Society and of its Poor Persons Procedure Committee) also opposed the motion, representing his Provincial Law Society, which, he said, did not experience even to-day any serious delay in allocating cases. The sum of £5 would be too small to make any difference. Far more important, the solicitors' profession found itself at various times on the defensive on moral grounds—a position which solicitors acutely resented. Solicitors took great pride in being able to boast in public that their profession was the only one to provide the services of its members free to the very poor under a regular system. The motion would deprive them of this claim.

Mr. W. A. L. Osborn declared himself against the motion as it stood, but suggested that the Poor Persons service should be tightened up to exclude such cases as a woman who was living with a man of means, and of a waiter who, though his wages were nominally very low, earned a considerable amount in tips. In such cases the court, he considered, ought to grant costs more readily.

Mr. Barry O'Brien referred to a paper which he had read seven years ago advocating some system of payment to solicitors for Poor Persons cases and prophesying that unless it were given the system would break down. The motion offered, however, in his opinion so trivial a remedy that he could not support it.

Mr. C. I. Bowerman also contested the premises of the motion and declared that few petitioners could pay more than the present £5. He agreed that the prestige of the profession would be lowered in the public eye if they accepted further payment for their services to poor persons. If any reform were required, it was that the Poor Persons Committee should send out cases to solicitors put in better order than at present. They would then find solicitors more ready to undertake them.

Mr. J. T. Goldsmith pointed out that London agents for country solicitors did not even receive out-of-pocket expenses for their work in Poor Persons cases. He thought small firms did relatively more of these cases than large.

The motion was put to the meeting and lost, five hands being shown in favour and twenty-three against.

Mr. Martin Benson Lawford, solicitor, of Oswestry, left £37,982, with net personalty £30,889.

War Legislation.

(Supplementary List, in alphabetical order, to those published week by week in THE SOLICITORS' JOURNAL *from the 16th September, 1939, to the 23rd January, 1941.)*

STATUTORY RULES AND ORDERS, 1940-41.

No. 59. **Alien** Employment Order, January 13, 1941.
No. 58. **Aliens** (Movement Restriction) Order, January 13, 1941.
No. 56. Aliens (Protected Areas) (No. 2) Order, January 13, 1941.
No. 57. Aliens (Wireless Apparatus Restriction) Order, January 13, 1941.
No. 47. **Allied Forces** (Application of 23 Geo. 5, c. 6) (No. 2) Order in Council, January 15, 1941.
No. 48. Allied Forces (Relations with Civil Authorities) (No. 2) Order in Council, January 15, 1941.
No. 49. Allied Forces (Penal Arrangements) (No. 2) Order in Council, January 15, 1941.
E.P. 66. **Building Operations** and Works of Engineering Construction (Welfare and Safety Provisions) Order, January 8, 1941.
E.P. 38. **Canned Fruits** (Maximum Prices) Order, January 11, 1941.
E.P. 70. **Civil Defence Duties** (Compulsory Enrolment) Order, January 18, 1941.
E.P. 67. Civil Defence (Employment) Order, January 17, 1941.
E.P. 72. **Control of Paper** (No. 26) Order, 1940, Direction No. 2, January 17, 1941.
E.P. 55. Control of Caustic Potash and Carbonate of Potash (No. 2) Order, January 15, 1941.
E.P. 50. **Defence** (General) Regulations, 1939. Order in Council, January 15, 1941, adding Regulations 32AA and 62AB, and amending Regulations 50, 63, 73 and 79.
E.P. 51. Defence (Trading with the Enemy) Regulations, 1940. Order in Council, January 15, 1941, amending Regulation 2 and adding Regulation 3B.
E.P. 68. Defence (General) Regulations, 1939. Order in Council, January 15, 1941, adding Regulations 26A and 27B, substituting a new Regulation for Regulation 27A and amending the Third Schedule.
No. 46. **Export of Goods** (Control) (No. 3) Order, January 15, 1941.
E.P. 69. **Fire Prevention** (Business Premises) Order, January 18, 1941.
E.P. 39. **Food** (Current Prices) Order, 1941. Amendment Order, January 11, 1941.
E.P. 43. Food (Current Prices) Order, 1941. Amendment Order, January 13, 1941.
E.P. 60. Food (Home Produced Eggs) Order, January 15, 1941, amending the Home Produced Eggs (Maximum Prices) (No. 3) Order, 1940.
E.P. 61. Food (Eggs) Order, January 15, 1941, amending the Imported Eggs (Maximum Prices) Order, 1940.
E.P. 41. **Jam** (Maximum Prices) Order, January 13, 1941.
E.P. 40. **Onions** (Maximum Prices) Order, 1940. Amendment Order, January 13, 1941.
No. 54. **Prices of Goods** (Permitted Prices) Amendment Order, January 14, 1941.
E.P. 17. **Removal of Sick Children** Order, January 6, 1941, under Regulation 31c of the Defence (General) Regulations, 1939, defining an Area and Authorising certain Local Authorities to act for the purposes of that Regulation.
E.P. 62. **Sausages** (Maximum Prices) Order, January 15, 1941.
E.P. 42. **Syrup and Treacle** (Maximum Prices) Order, January 13, 1941.
No. 2211. **Unemployment Insurance** (Emergency Powers) Amendment (No. 4) Regulations, December 31, 1940.
No. 64. **Wild Birds** Protection (Administrative County of Southampton (Amending Order, January 9, 1941.

(E.P. indicates that the Order is made under Emergency Powers.)

PROVISIONAL RULES AND ORDERS, 1941.

Elementary Education Grant Provisional Amending Regulations, January 11, 1941 (Board of Education Grant Regulations No. 1, Provisional Amendment, 1941).

Higher Education Grant Provisional Amending Regulations, January 11, 1941 (Board of Education Grant Regulations No. 4, Provisional Amendment, 1941).

TREASURY.

Defence (Finance) Regulations, 1939, made under the Emergency Powers (Defence) Acts, 1939 and 1940, printed as amended up to January 1, 1941, together with a classified list of Orders made under the Defence (Finance) Regulations, 1939, and in force on January 1, 1941, 2nd Edition, January 1, 1941.

Copies of the above S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Court Papers.

SUPREME COURT OF JUDICATURE.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT NO. I.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
Feb. 3	Andrews	Hay	More
,, 4	Jones	More	Blaker
,, 5	Hay	Blaker	Andrews
,, 6	More	Andrews	Jones
,, 7	Blaker	Jones	Hay
,, 8	Andrews	Hay	More

	GROUP A.		GROUP B.	
	MR. JUSTICE BENNETT.	MR. JUSTICE SIMONDS.	MR. JUSTICE UTHWATT.	MR. JUSTICE MORTON.
	Non-Witness.	Witness.	Non-Witness.	Witness.
	Mr.	Mr.	Mr.	Mr.
Feb. 3	Jones	Hay	Blaker	Andrews
,, 4	Hay	More	Andrews	Jones
,, 5	More	Blaker	Jones	Hay
,, 6	Blaker	Andrews	Hay	More
,, 7	Andrews	Jones	More	Blaker
,, 8	Jones	Hay	Blaker	Andrews

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October, 1939) 2%. Next London Stock Exchange Settlement, Thursday, 6th February, 1941.

	Div. Months.	Middle Price 29 Jan. 1941.	Flat Interest Yield.	† Approximate Yield with redemption.
			£ s. d.	£ s. d.
ENGLISH GOVERNMENT SECURITIES.				
Consols 4% 1957 or after	FA	110½	3 12 5	3 3 1
Consols 2½%	JAJO	77⅛	3 4 6	—
War Loan 3% 1955–59	AO	101	2 19 5	2 18 2
War Loan 3½% 1952 or after	JD	103⅝	3 7 8	3 3 0
Funding 4% Loan 1960–90	MN	113⅜	3 10 4	3 0 11
Funding 3% Loan 1959–69	AO	99⅛	3 0 4	3 0 6
Funding 2½% Loan 1952–57	JD	98⅛	2 15 10	2 17 4
Funding 2½% Loan 1956–61	AO	92½	2 14 1	3 0 1
Victory 4% Loan Average life 20 years	MS	111xd	3 12 1	3 4 10
Conversion 5% Loan 1944–64	MN	108¼	4 12 6	2 3 4
Conversion 3½% Loan 1961 or after	AO	104½	3 7 0	3 3 10
Conversion 3% Loan 1948–53	MS	102xd	2 18 10	2 13 3
Conversion 2½% Loan 1944–49	AO	100	2 10 0	2 10 0
National Defence Loan 3% 1954–58	JJ	101⅛	2 19 3	2 17 9
Local Loans 3% Stock 1912 or after	JAJO	90	3 6 8	—
Bank Stock	AO	339½	3 10 9	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	91	3 5 11	—
India 4½% 1950–55	MN	109¾	4 2 2	3 6 3
India 3½% 1931 or after	JAJO	96½	3 12 6	—
India 3% 1948 or after	JAJO	83½	3 11 10	—
Sudan 4½% 1939–73 Average life 18½ years	FA	109	4 2 7	3 16 3
Sudan 4% 1974 Red. in part after 1950	MN	107	3 14 9	3 3 6
Tanganyika 4% Guaranteed 1951–71	FA	109	3 13 5	2 18 11
Lon. Elec. T. F. Corpn. 2¼% 1950–55	FA	93	2 13 9	3 1 9
COLONIAL SECURITIES.				
*Australia (Commonwealth) 4% 1955–70	JJ	105	3 16 2	3 10 11
Australia (Commonwealth) 3½% 1964–74	JJ	94	3 9 2	3 11 3
Australia (Commonwealth) 3% 1955–58	AO	94	3 3 10	3 9 1
*Canada 4% 1953–58	MS	111	3 12 1	2 19 3
New South Wales 3½% 1930–50	JJ	100	3 10 0	3 10 0
New Zealand 3% 1945	AO	99	3 0 7	3 5 6
Nigeria 4% 1963	AO	107	3 14 9	3 11 1
Queensland 3½% 1950–70	JJ	100	3 10 0	3 10 0
*South Africa 3½% 1953–73	JD	102	3 8 8	3 6 0
Victoria 3½% 1929–49	AO	101	3 9 4	—
CORPORATION STOCKS.				
Birmingham 3% 1947 or after	JJ	83½	3 11 10	—
Croydon 3% 1940–60	AO	93	3 4 6	3 10 2
Leeds 3½% 1958–62	JJ	96	3 7 8	3 10 5
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	96	3 12 11	—
London County 3% Consolidated Stock after 1920 at option of Corporation	MJSD	85½	3 10 2	—
*London County 3½% 1954–59	FA	102	3 8 8	3 6 2
Manchester 3% 1941 or after	FA	83	3 12 3	—
Manchester 3% 1958–63	AO	95	3 3 2	3 6 2
Metropolitan Consolidated 2½% 1920–49	MJSD	99	2 10 6	2 12 6
Met. Water Board 3% "A" 1963–2003	AO	86⅛	3 9 4	3 10 9
Do. do. 3% "B" 1934–2003	MS	89	3 7 5	3 8 6
Do. do. 3% "E" 1953–73	JJ	92	3 5 3	3 8 3
Middlesex County Council 3% 1961–66	MS	93	3 4 6	3 8 4
*Middlesex County Council 4½% 1950–70	MN	105	4 5 9	3 18 0
Nottingham 3% Irredeemable	MN	82	3 13 2	—
Sheffield Corporation 3½% 1968	JJ	101	3 9 4	3 8 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS.				
Great Western Rly. 4% Debenture	JJ	105½	3 15 10	—
Great Western Rly. 4½% Debenture	JJ	113½	3 19 4	—
Great Western Rly 5% Debenture	JJ	122½	4 1 8	—
Great Western Rly. 5% Rent Charge	FA	118	4 4 9	—
Great Western Rly. 5% Cons. Guaranteed	MA	114	4 7 9	—
Great Western Rly. 5% Preference	MA	88	5 13 8	—

*Not available to Trustees over par.
† In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.